TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 19

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

CLARA BELLE HENNING, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION FOR CERTIORARI FILED NOVEMBER 06, 1951
CERTIORARI GRANTED JANUARY 28, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 456

THE UNITED STATES OF AMERICA, PETITIONER

vs.

CLARA BELLE HENNING, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

In United States District Court for the District of Massachusetts

No. 7917 Civil Action

CLARA BELLE HENNING, PLAINTIFF

vs.

UNITED STATES OF AMERICA ET AL., DEFENDANT

Docket entries

1948

Oct. 14—$15 Complaint filed.
14—Plaintiff's claim for trial by jury filed.
14—Summons issued.
18—Sums. retd. by Marshal, served Oct. 15, 1948, filed.
Dec. 10—Deft.'s answer and counterclaim for interpleader filed.
Dec. 10—FORD, J. Order joining Bessie M. Henning as additional party deft. Order filed.
10—Sums. issued directed to Bessie M. Henning, Interpleader defendant.

1949

Jan. 4—Sums. retd. by Marshal, served Dec. 28, 1948, filed.
7—Answer of Bessie M. Henning filed.
24—Appearance of Philip T. Jones, Asst. U. S. Atty. for deft. filed.
Aug. 18—Defendant's motion to strike answer of Interpleader defendant, filed.
Dec. 21—FORD, J. Case pretried. Pretrial Memo filed.

1950

Jan. 9—WYZANSKI, J. Motion to strike answer of Interpleader defendant allowed to be withdrawn.
9—Motion to amend complaint filed by Clara Belle Henning.
9—WYZANSKI, J. Motion to amend complaint allowed.
Aug. 9—Defendant's answer to amended complaint, filed.
Oct. 17—WYZANSKI, J. Oral waiver of jury trial by parties in open court.
17—WYZANSKI, J. Trial without jury begins, stipulation of facts filed; evidence; amended answer to be filed by Administrator of the Estate of Bessie Henning; evidence; argument on behalf of Administrator; findings of fact and conclusions of law dictated in open court; ORDERED decree to be drawn awarding sums due from July 4, 1945 to Dec. 5, 1945 to father, Otto Henning, from Dec. 9, 1945 to July 30, 1949 to

Bessie Henning and Clara Henning equally, from July 1, 1949 to Clara Henning; provision by agreement or by further order of Court to be made for counsel fees.

17—Answer of Joseph S. Kennedy, Administrator, filed.

18—WYZANSKI, J. MEMORANDUM OF OPINION.

1951

Jan. 12—WYZANSKI, J. JUDGMENT, in accordance with the memorandum dated October 17, 1950, as follows:

(1) That Joseph S. Kennedy, as administrator of the estate of Otto F. Henning, do have and recover of and from the defendant, the United States of America, $500;

(2) That the plaintiff Clara Belle Henning, and Joseph S. Kennedy, as administrator of the estate of Bessie M. Henning, do have and recover of and from the defendant, the United States of America, in equal shares, $3,500;

(3) That the plaintiff, Clara Belle Henning, do have and recover of and from the defendant, the United States of America, $1,583.33, being the amount of the next nineteen monthly installments of death benefits payable thereunder commencing July 4, 1949, until January 4, 1951, being the last anniversary date preceding the date this judgment is entered and also the amounts of $83.33 to be paid on the fourth day of each of the 53 months following the date of this judgment, that is, 53 months beginning February 4, 1951, provided that payment on each of those dates shall be contingent on the said Clara Belle Henning being alive that date;

(4) That the defendant, the United States of America, deduct $50, being 10% of the total sum paid to the administrator of the estate of Otto F. Henning under the said policy by virtue of and pursuant to this judgment and pay the same to Richard H. Lee, Esquire, for services rendered in this cause;

(5) That the defendant, the United States of America, deduct $175, being 10% of the total sum paid to the administrator of the estate of Bessie M. Henning under the said policy by virtue of and pursuant to this judgment and pay the same to Richard H. Lee, Esquire, for services rendered in this cause;

(6) That the defendant, the United States of America, deduct $175 plus $158.33, being 10% of the total sum of the insurance benefits which have accrued to

Clara Belle Henning, plaintiff, to date, and also 10% of any and all future benefits which may hereafter be paid to her by virtue of and pursuant to paragraph 3 of this judgment and pay same to Frederick Breen, Esquire, her attorney, for services rendered in this cause. Judgment filed. Copies mailed to counsel.

Jan. 22—Motion of the United States of America for new trial filed.

22—WYZANSKI, J. Motion of the United States of America for new trial denied. Counsel notified Jan. 22, 1951.

31—Notice of Appeal filed by defendant, United States; copy mailed February 2, 1951, to Richard H. Lee, 27 State Street, Boston, for Interpleaded Defendant; copy mailed to Frederick Breen, 412 Barristers Hall, Boston, for plaintiff.

Mar. 1—Designation of Contents of Record filed by appellant.

1—Statement of Points filed by appellant.

8—Motion for extension of time for filing record and docketing appeal, filed by appellant.

12—WYZANSKI, J. Ordered time for docketing appeal be extended to and including April 11, 1951, end of 70-day period.

In United States District Court

Complaint

Filed October 14, 1948

1. This is an action arising under the laws of the United States, U. S. C. A., Title 38, Section 817.

2. The full name of the plaintiff is Clara Belle Henning, and her address is 74 Williams Street, Jamaica Plain, Boston, within the District of Massachusetts.

3. The plaintiff was the mother of one Eugene Charles Henning, who was born on September 20, 1912 and died on July 4, 1945 while he was on active duty with the United States Naval Reserve.

4. A policy of National Service Life Insurance on the life of the said Eugene Charles Henning in the sum of ten thousand (10,000) dollars was issued effective December 1943 as claimed by XC-4-139-617; the said Eugene Charles Henning designated as sole beneficiary of this policy his wife, Mabel Evelyn Henning as principal beneficiary and his father, Otto Henning as contingent beneficiary. Shortly thereafter, his marriage to Mabel Evelyn Henning was annulled. His father Otto Henning died on December 8, 1945, before any payments of insurance were made to him and his stepmother, Bessie M. Henning, who resides at

76 Needham Street, Dedham, Massachusetts, claiming as loco parentis towards him as the last person to bear the relation of mother during his minority, claims the proceeds of this policy.

5. The said Bessie M. Henning was not within the degree or nature of relationship permitted to be a beneficiary of such a policy by the provisions of The National Service Life Insurance Act of 1940, as amended; and she did not stand in loco parentis to the insured for a period of not less than one year prior to his entry into active service.

6. The Veterans' Administration approved an award for the benefit of the insurance to the said Bessie M. Henning as of August 17, 1948; subsequently, the plaintiff contested the payments to the said Bessie M. Henning on the grounds that the policy could not be legally payable to her.

7. The plaintiff submitted evidence to the Veterans' Administration that the said Bessie M. Henning at no time stood in loco parentis to the said Eugene Charles Henning.

8. Despite the evidence submitted by the plaintiff, the Veterans' Administration by letter dated August 17, 1948 advised the plaintiff that a decision had been rendered whereby the claim of the plaintiff was denied and the claim of Bessie M. Henning was allowed: Therefore, a "disagreement" exists within the meaning of the U. S. C. A., Title 38, Section 817.

9. Upon a determination that the policy on the life of Eugene Charles Henning is not payable to Bessie M. Henning, the plaintiff will be entitled to the entire benefits therefor under the provisions of the National Life Insurance Act as the insured left no widow or children and his father has deceased.

Wherefore, the plaintiff respectfully prays that this Honorable Court:

1. Determine that Bessie M. Henning did not stand in loco parentis to Eugene Charles Henning prior to his entry into armed service,

2. Order that the full proceeds of the ten thousand (10,000) dollars policy of the National Service Life Insurance upon the said Eugene Charles Henning be paid to the plaintiff;

3. Order that reasonable attorney's fees be allowed to the plaintiff;

4. Grant such other relief as it may deem necessary and proper; and

5. Enter a judgment upon the facts and the law.

FREDERICK BREEN,
412 Barristers Hall, Boston, Mass.

In United States District Court

Answer and counterclaim for interpleader

Filed December 10, 1948

Now comes the defendant, the United States of America, by William T. McCarthy, United States Attorney, and Philip T. Jones, Assistant United States Attorney, in and for the District of Massachusetts, and for answer to the complaint filed herein says:

I

This defendant admits the allegation contained in paragraph 1 of the complaint.

II

This defendant, upon information and belief, admits the allegations contained in paragraphs 2 and 3 of the complaint.

III

Answering paragraph 4 of the complaint, this defendant admits that Eugene Charles Henning, hereinafter referred to as the insured, while in the military service, applied for and was granted, effective December 1, 1942, a contract of National Service Life Insurance, policy No. N-8 274 885, in the amount of $10,000, in which he named as principal beneficiary Mabel Evelyn Henning, described as wife, and as contingent beneficiary Otto Henning, described as father; that thereafter the insured executed Veterans Administration Insurance Form 336, on the 27th day of July, 1944, in which he cancelled all previous designations of beneficiaries under the said policy and named as principal beneficiary Otto Henning, described as father, for the full amount of the said insurance and in which no contingent beneficiary was named; that the premiums on the said policy were paid to include the month of July 1945; that the insured died July 4, 1945; that Otto Ferdinand Henning, who is the same person as Otto Henning, father of the insured, died December 8, 1945; that the Judge of Probate at Dedham, in and for the County of Norfolk, Commonwealth of Massachusetts, entered a decree on the 16th day of October 1944, upon the petition of Eugene Charles Henning, annulling the marriage ceremony between the said Eugene Charles Henning and Mabel Evelyn Hathaway Henning and declaring it null and void for the reason that the said Mabel Evelyn Hathaway Henning was legally incompetent to contract a valid marriage; that, subsequent to the death of the said Otto Ferdinand Henning,

Clara Belle Henning filed in the Veterans Administration on February 4, 1946, Veterans Administration Insurance Form 1557, Affidavit of Relationship, alleging that she was the mother of the insured; that Bessie M. Henning filed in the Veterans Administration on February 14, 1946, Veterans Administration Insurance Form 1557, Affidavit of Relationship, alleging that she was the foster mother of the insured and that she stood in loco parentis to the insured within the meaning of that term as defined in Section 802 (f), Title 38, U. S. C. A. This defendant admits, upon information and belief, that the said Bessie M. Henning resides at 76 Needham Street, Dedham, Massachusetts, and that, as the person who last bore the relationship of mother to the insured during his minority, she claims the proceeds of this policy. Except as admitted herein, the allegations of this paragraph are denied.

IV

This defendant denies the allegations contained in paragraph 5 of the complaint.

V

This defendant denies the allegations contained in paragraph 6 of the complaint. Further answering, this defendant says that the Veterans Administration has held that Bessie M. Henning stood in loco parentis to the insured during his minority and was the last person to bear the relationship of mother to him during this period and prior to his entry into the military service. This defendant admits that the plaintiff has contested this finding and the payment of the proceeds of the policy of insurance involved in this action to Bessie M. Henning. It is denied that the Veterans Administration has approved an award of the proceeds of the policy to the said Bessie M. Henning, and says that no award of benefits has been made to the said Bessie M. Henning, and that no payment will be made to her pending the termination of this litigation.

VI

This defendant denies the allegations contained in paragraph 7 of the complaint, but says that the plaintiff submitted some evidence to the Veterans Administration tending to show that the said Bessie M. Henning at no time stood in loco parentis to the insured.

VII

This defendant admits the allegations contained in paragraphs 8 and 9 of the complaint.

This defendant denies each and every allegation of the complaint not herein specifically admitted.

COUNTER-CLAIM FOR INTERPLEADER

Further answering herein by way of counter-claim for interpleader, this defendant adopts and incorporates herein as fully as if restated the allegations of fact admitted and set forth in paragraphs I–VII, inclusive, of this answer, and says that by reason of the conflicting claims of the plaintiff, Clara Belle Henning, and Bessie M. Henning a substantial question has arisen and now exists as to whether this defendant, the United States of America, is obligated to pay the insurance benefits to Clara Belle Henning or to Bessie M. Henning. This defendant further says that in order to avoid a multiplicity of suits for the said insurance benefits and a possible subjection of this defendant to double liability, it is essential that the court determine in this action whether the defendant, the United States of America, is obligated to pay the insurance benefits under the National Service Life Insurance contract involved in this action to Clara Belle Henning or to Bessie M. Henning, and for this purpose the defendant says that Bessie M. Henning is an indispensable party to the action.

Wherefore the defendant prays:

1. That Bessie M. Henning, whose address is 76 Needham Street, Dedham, Massachusetts, be joined as a party-defendant in this action as provided by Section 19 of the World War Veterans Act of 1924, as amended (Section 445, Title 38, U. S. C. A.), and that she be cited to appear and answer herein in such manner as the court may direct and upon final hearing the court direct this defendant, the United States of America, as to the person entitled to receive the monthly installments under the contract of insurance involved in this action.

2. That the court discharge this defendant from any and all liability in the premises, except to the person who shall be adjudged entitled to receive the benefits of the said insurance policy.

3. For its costs and for such other and further relief as to the court may seem just and proper.

WILLIAM T. MCCARTHY,
United States Attorney.

PHILIP T. JONES,
Assistant U. S. Attorney.

In United States District Court

Order joining additional party-defendant

December 10, 1948

Upon consideration of the answer of the defendant, the United States of America, and its prayer that Bessie M. Henning be joined as a party-defendant herein, and it appearing to the court that unless the conflicting interests of the plaintiff, Clara Belle Henning, and Bessie M. Henning are now judicially determined, the United States of America may be subjected to further litigation and possible double liability.

It is ordered, that in accordance with the provisions of Section 19, World War Veterans Act, 1924, as amended, and Rules 13 (h). and 22 of the Federal Rules of Civil Procedure, Bessie M. Henning be made a party-defendant in this action, and

It is further ordered, that a certified copy of the complaint filed herein, together with a certified copy of the defendant's answer and counter-claim, and a certified copy of this order, as well as a summons requiring the said Bessie M. Henning to appear in this court in answer to the suit within 20 days after service of said summons, complaint, and order, be personally served on the said Bessie M. Henning by the United States Marshal in and for the District of Massachusetts as provided by law.

This tenth day of December 1948.

FRANCIS J. W. FORD,
United States District Judge.

In United States District Court

Answer of Bessie M. Henning

Filed January 7, 1949

Now comes Bessie M. Henning, interpleader defendant, of Dedham, in said District of Massachusetts, and makes answer to the complaint of Clara Belle Henning and the counterclaim for interpleader of the United States of America as follows:

1. The defendant admits the allegations of paragraph 1 of the complaint.

2. The defendant admits the allegations of paragraph 2 of the complaint.

3. The defendant admits that Clara Belle Henning was the natural mother of Eugene Charles Henning and that said Eugene Charles Henning was born September 20, 1912 and died July 4, 1945 while on active duty with the United States Navy.

4. In answer to paragraph 4 of the complaint the defendant admits that a policy of National Service Life Insurance was issued to Eugene Charles Henning in the sum of ten thousand (10,000) dollars, effective December 1942, Certificate No. N–8 274 885; that the said Henning designated his then wife, Mabel Evelyn Henning, as principal beneficiary; and his father, Otto F. Henning, also known as Otto Henning, as contingent beneficiary; that thereafter and during the lifetime of Eugene Charles Henning his marriage to Mabel Evelyn Henning was annulled and Eugene Charles Henning notified the Veterans Administration to change the beneficiary from Mabel Evelyn Henning to Otto F. Henning; that at the time of the death of the insured, Eugene Charles Henning, his father, Otto Henning, was living and was the beneficiary of his insurance. This defendant further admits that the said Otto Henning, beneficiary, died on December 8, 1945 before any payments were made to him and that this defendant, Bessie M. Henning, resides at 76 Needham Street, Dedham and claims the proceeds of this policy, as the person in loco parentis toward the deceased and as the last person to bear relation of mother to him during his minority and an administratrix of the estate of Otto F. Henning.

5. The defendant denies that she was not within the degree or nature of relationship permitted to be a beneficiary by the provisions of The National Service Life Insurance Act of 1940, as amended, and further denies that she did not stand in loco parentis to the insured, and the defendant says that from September 3, 1927 until the enlistment of the defendant in 1942 and until his entry into active service she bore the relation of mother to the deceased.

6. The defendant admits the allegations of paragraph 6 of the complaint.

7. The defendant denies the allegations of paragraph 7 of the complaint and further says that no conclusive evidence has been submitted by any party proving that the said Bessie M. Henning at no time stood in loco parentis to Eugene Charles Henning.

8. The defendant admits that the Veterans Administration advised the plaintiff of a decision in favor of Bessie M. Henning on August 17, 1948 as to whether a disagreement exists within the meaning of the U. S. C. A., Title 38, Section 817, the defendant leaves the plaintiff to her proof.

9. The defendant admits that the insured, Eugene Charles Henning, left no widow or children, and that his stated beneficiary, his father Otto Henning, died December 8, 1945. As to the other allegations of paragraph 9, the defendant denies them.

10. In answer to the counterclaim for interpleader of United States of America, the defendant admits that by reason of the

conflicting claims of the plaintiff, Clara Belle Henning, and the defendant, Bessie M. Henning, a question has arisen as to whom the United States of America should pay the insurance benefits and admits that this defendant Bessie M. Henning is an indispensable party to the suit.

11. And the defendant say that the plaintiff, Clara Belle Henning, was divorced from her former husband, Otto F. Henning, by decree of the Superior Court for Norfolk County, Commonwealth of Massachusetts, on the 8th day of February 1923, No. 2676, in which Otto F. Henning, the husband, was libellant and the court found said Clara Belle Henning guilty of cruel and abusive treatment and awarded the care and custody of Eugene Charles Henning, then a minor child, to said Otto F. Henning; and that at no time subsequent to said February 8, 1923 did Clara Belle Henning bear the relation of mother to the said Eugene Charles Henning; that on September 3, 1927 the defendant Bessie M. Henning married Otto F. Henning, who was then the father and natural guardian of Eugene Charles Henning and the person entitled to his custody; and that during the period from September 3, 1927 until the death of the said Eugene Charles Henning the defendant Bessie M. Henning continued to bear the relationship of mother toward the insured, and that she gave him counsel and advice and furnished him with his meals, did his washing, ironing and mending, during the greater part of that period, and that the said Eugene Charles Henning consulted her, wrote her and showed affection for her and confidence in her as his foster mother; that upon going into the service he left his furniture and civilian clothes with her and continued to regard her in loco parentis.

Wherefore, the defendant prays:

1. That the Court determine that Bessie M. Henning stood in loco parentis to Eugene Charles Henning at the time of his entry into the service of the United States and that she bore the relation of mother to him for a period of more than a year prior to such entry;

2. That the Court determine that Bessie M. Henning is the administratrix of the estate of Otto F. Henning, also known as Otto Henning, who was the father and named beneficiary of the insured at the date of death of the insured;

3. That the Court order that the proceeds of the policy of National Service Life Insurance issued upon the life of Eugene Charles Henning, No. N– 8 274 885, effective December 1, 1942, in the amount of $10,000.00 be paid to the defendant Bessie M. Henning as beneficiary.

4. That a reasonable attorney's fee be allowed to the defendant Bessie M. Henning, together with her costs and such other relief as may seem just and proper to the Court.

By her attorney:

RICHARD H. LEE,
BLAKEMORE & LEE.

In United States District Court

Motion to strike answer of interpleader-defendant

Filed August 18, 1949

And now comes the defendant, the United States of America, by George F. Garrity, United States Attorney, in and for the District of Massachusetts, and notes on the record the fact that the interpleader-defendant, Bessie M. Henning, of Dedham, in the District of Massachusetts, died on June 30, 1949, as attested to by the death certificate attached hereto and therefore moves that the Answer of the said Bessie M. Henning be stricken from the record.

GEORGE F. GARRITY,
United States Attorney.
By PHILIP T. JONES,
Assistant United States Attorney.

Not pressed. Allowed to be withdrawn. WYZANSKI, J., Jan. 9, 1950.

COMMONWEALTH OF MASSACHUSETTS

CERTIFICATE OF DEATH

From the Records of Deaths in the

TOWN OF DEDHAM, MASSACHUSETTS

1. Date of Death—June 30, 1949.
2. Name—Bessie Henning.
   (Maid Name)—Bessie Gass.
3. Sex—Female.
   and whether Single, Married or Widowed—Widowed.
4. Color—White.
5. Age—57 Years, -- Month, -- Days.
6. Disease or Cause of Death—Arteriosclerotic heart disease and burns from fall on stove.
7. Residence—Dedham, Massachusetts.
8. Occupation—None.
9. Place of Death—Boston, Massachusetts.
10. Place of Birth—Dedham, Massachusetts.

11. Name of Husband or Wife—Otto F. Henning.
12. Name of Father—Daniel E. Glass.
13. Maiden Name of Mother—Sarah Dickson.
14. Birthplace of Father—Canada.
15. Birthplace of Mother—Canada.
16. Place of Interment—Brookdale Cemetery, Dedham, Massachusetts.

I, John T. Carey, depose and say that I hold the office of Town Clerk of the Town of Dedham in the County of Norfolk and Commonwealth of Massachusetts; that the records of Births, Marriages and Deaths required by law to be kept in said Town are in my custody, and that the above is a true extract from the records of Deaths in said Town, as certified by me.

Witness my hand and the seal of said Town, on the 17th day of August, 1949.

JOHN T. CAREY,
Town Clerk.

MEMORANDUM: The foregoing motion filed by defendant, United States, not being pressed, was allowed to be withdrawn by the Court, WYZANSKI, J., as appears endorsed thereon.

JOHN A. CANAVAN, *Clerk.*

In United States District Court

Motion to amend complaint

Filed January 9, 1950

And now comes the plaintiff, Clara Belle Henning, and notes on the record the fact that the interpleader-defendant, Bessie M. Henning, of Dedham, in the District of Massachusetts, died on June 30, 1949 and therefore moves that she be allowed to amend her complaint.

CLARA BELLE HENNING,
By FREDERICK BREEN,
Her Attorney.

Allowed. WYZANSKI, J. Jan. 9, 1950.

In United States District Court

Amended complaint

Filed January 9, 1950

1. This is an action arising under the laws of the United States, U. S. C. A., Title 38, Section 817.

2. The full name of the plaintiff is Clara Belle Henning, and her address is 74 Williams Street, Jamaica Plains, Boston, within the District of Massachusetts.

4. The plaintiff was the mother of one Eugene Charles Henning, who was born on September 20, 1912 and died on July 4, 1945, while he was on active duty with the United States Naval Reserve.

4. A policy of National Service Life Insurance on the life of the said Eugene Charles Henning in the sum of ten thousand dollars ($10,000), effective December 1942, Certificate No. N-8274-885; the said Eugene Charles Henning designated as sole beneficiary of this policy his wife, Mabel Evelyn Henning as principal beneficiary and his father, Otto Henning as contingent beneficiary. Shortly thereafter, his marriage to Mabel Evelyn Henning was annulled. His father Otto Henning died on December 8, 1945, before any payments of insurance were made to him and his stepmother Bessie M. Henning, who resided at 76 Needham Street, Dedham, Massachusetts, and who claimed the proceeds of this policy.

5. The said Bessie M. Henning was not within the degree or nature of relationship permitted to be a beneficiary of such a policy by the provisions of The National Service Life Insurance Act of 1940, as amended; and she did not stand in loco parentis to the insured for a period of not less than one year prior to his entry into active service.

6. The Veterans Administration approved an award for the benefit of the insurance to the said Bessie M. Henning as of August 17, 1948; subsequently, the plaintiff contested the payments to the said Bessie M. Henning on the grounds that the policy could not be legally payable to her.

7. The plaintiff submitted evidence to the Veterans Administration that the said Bessie M. Henning at no time stood in loco parentis to the said Eugene Charles Henning.

8. Despite the evidence submitted by the plaintiff, the Veterans Administration by letter dated August 17, 1948 advised the plaintiff that a decision had been rendered whereby the claim of the plaintiff was denied and the claim of Bessie M. Henning was allowed: Therefore, a "disagreement" existed within the meaning of the U. S. C. A., Title 38, Section 817.

9. Upon a determination that the policy on the life of Eugene Charles Henning is not payable to Bessie M. Henning on the ground that she did not stand in loco parentis and she was not the last person to bear the relationship of mother toward the insured, and that Bessie M. Henning has deceased before receiving any of the said benefits therefore under the provisions of The National Life Insurance Act as the insured left no widow, or

children, and his father has deceased and the plaintiff being the only living parent of the said Eugene Charles Henning and never having relinquished her rights and obligations will be entitled to the benefits of The National Life Insurance Act as the natural mother of Eugene Charles Henning.

Wherefore, the plaintiff respectfully prays that this Honorable Court:

1. Determine that Bessie M. Henning did not stand in loco parentis to Eugene Charles Henning prior to his entry into armed service or in the alternative determine that the plaintiff being the only living natural parent of the said Eugene Charles Henning has never relinquished her parental rights and obligations;

2. Order that the full proceeds of the ten thousand dollar ($10,000) policy of the National Service Life Insurance upon the said Eugene Charles Henning be paid to the plaintiff;

3. Order that reasonable attorney's fees be allowed to the plaintiff;

4. Grant such other relief as it may deem necessary and proper, and

5. Enter a judgment upon the facts and the law.

In United States District Court

Answer to Amended Complaint

Filed August 9, 1950

Now comes the defendant, the United States of America, by George F. Garrity, United States Attorney in and for the District of Massachusetts, and for answer to the amended complaint filed herein says:

I

The defendant hereby denies each and every allegation of said complaint not herein specifically admitted, qualified, or otherwise denied.

II

The defendant admits the allegations contained in paragraph one of said complaint.

III

The defendant, upon information and belief, admits the allegations contained in paragraph two of said complaint.

IV

The defendant, upon information and belief, admits the allegations contained in paragraph three of said complaint.

V

Answering paragraph four of said complaint, the defendant admits that Eugene Charles Henning, hereinafter referred to as the insured, while in the military service applied for and was granted, effective December 1, 1942, a contract of National Service Life Insurance, policy No. N-8274885, in the amount of $10,000.00, in which he named as principal beneficiary Mabel Evelyn Henning, described as wife, and as contingent beneficiary, Otto Henning, described as father; that thereafter the insured executed Veterans Administration Form 336 on the 27th day of July 1944, in which he cancelled all previous designations of beneficiaries under the said policy and named as principal beneficiary, Otto Henning, described as father, for the full amount of the said insurance and in which no contingent beneficiary was named; that the premiums on the said policy were paid to include the month of July 1945; that the insured died July 4, 1945; that Otto Ferdinand Henning, who is the same person as Otto Henning, father of the insured, died December 8, 1945; that the judge of Probate at Dedham, in and for the County of Norfolk, Commonwealth of Massachusetts, entered a decree on the 16th day of October 1944, upon the petition of Eugene Charles Henning, annulling the marriage ceremony between the said Eugene Charles Henning and Mabel Evelyn Hathaway Henning and declaring it null and void for the reason that the said Mabel Evelyn Hathaway Henning was legally incompetent to contract a valid marriage; that subsequent to the death of the said Otto Ferdinand Henning, Clara Belle Henning filed in the Veterans Administration on February 4, 1946 Veterans Administration Insurance Form 1557, Affidavit of Relationship, alleging that she was the mother of the insured; that Bessie M. Henning filed in the Veterans Administration on February 14, 1946, Veterans Administration Insurance Form 1557, Affidavit of Relationship, alleging that she was the foster mother of the insured and that she stood in loco parentis to the insured within the meaning of that term as defined in Section 802 (f), Title 38, U. S. C. A. This defendant admits, upon information and belief, that the said Bessie M. Henning resided at 76 Needham Street, Dedham, Massachusetts, and that she claimed the proceeds of this policy as the person who last bore the relationship of mother to the insured during his minority.

Except as admitted herein, the allegations of this paragraph are denied.

VI

The defendant denies the allegations contained in paragraph five of said complaint.

VII

The defendant denies the allegations contained in paragraph six of said complaint. Further answering, the defendant says that the Veterans Administration held that Bessie M. Henning stood in loco parentis to the insured during his minority and was the last person to bear the relationship of mother to him during this period and prior to his entry into the military service. This defendant admits that the plaintiff has contested this finding of the payment of the proceeds of the policy of insurance involved in this action to Bessie M. Henning. Defendant denies that the Veterans Administration has approved an award of the proceeds of the policy to the said Bessie M. Henning and says that no award of benefits has been made to the said Bessie M. Henning and that no payment will be made to the estate of Bessie M. Henning pending the termination of this litigation.

VIII

The defendant denies the allegations contained in paragraph seven of said complaint but says that the plaintiff submitted some evidence to the Veterans Administration tending to show that the said Bessie M. Henning at no time stood in loco parentis to the insured.

IX

The defendant admits the allegations contained in paragraph eight of said complaint.

X

Answering the allegations contained in paragraph nine of said complaint, this defendant admits that Bessie M. Henning has deceased before receiving any of the said benefits under the policy of insurance in suit, but denies all other allegations contained in said paragraph.

Further answering the allegations contained in the plaintiff's amended complaint, this defendant states that Clara Belle Henning relinquished her rights and obligations as mother of Eugene Charles Henning during his minority and that Bessie M. Henning stood in the relationship of parent within the meaning of that term as defined in Section 802 (f), Title 38, U. S. C. A. and was

the last person to stand in the relationship of parent to the deceased, Eugene Charles Henning, that Bessie M. Henning has deceased before any payment of benefits under said policy was made to her, that no payments of benefits is permitted to be made to her estate under the provisions of the National Service Life Insurance Act and that Clara Belle Henning is not within the permitted class of beneficiaries to receive benefits under the policy of insurance in suit.

Wherefore, this defendant prays the court to enter judgment for this defendant, the United States of America.

GEORGE F. GARRITY,
United States Attorney.
By PHILIP T. JONES,
Assistant U. S. Attorney.

In United States District Court

Answer of Joseph S. Kennedy, Administrator

Filed October 17, 1950

Now comes Joseph S. Kennedy of Dedham, Massachusetts, and states that the defendant in interpleader, Bessie M. Henning, who previously filed an answer in this case on January 4, 1949, died on June 30, 1949, and that he, the said Joseph S. Kennedy, was appointed administrator of the Estate of Bessie M. Henning on August 17, 1949, by the Probate Court for Norfolk County, Case No. 119666, and that he prosecutes this claim on behalf of the Estate of Bessie M. Henning, and for answer to the amended complaint he wishes to adopt the answers previously filed by the said Bessie M. Henning in January 1949, and asks that the prayers attached to said answer be adopted as the prayers of the defendant Kennedy, Administrator.

By his attorney:

RICHARD H. LEE.

Filed October 17, 1950, by leave of Court.

In United States District Court

Stipulation of facts

Filed October 17, 1950

The parties herein hereby stipulate and agree that the following facts are true and may be submitted to the jury without formal proof:

1. That on September 20, 1912, Eugene C. Henning was born, the son of Otto F. and Clara B. Henning, at Boston, Massachusetts.

2. That on August 9, 1923, Otto F. and Clara B. Henning were divorced by decree of the Judge of the Superior Court of Norfolk County on the libel of Otto F. Henning charging cruel and abusive treatment, the care and custody of their minor child, Eugene C. Henning, being awarded to Otto F. Henning.

3. That on September 3, 1927, Otto F. Henning and Bessie M. Gass were married at Dedham, Massachusetts.

4. That on January 27, 1940, Eugene C. Henning and Mabel Evelyn Hathaway were married at Nashua, New Hampshire.

5. That on November 11, 1942, Eugene C. Henning entered upon active duty in the United States Navy.

6. That on December 1, 1942, a policy of National Service Life Insurance was issued on the life of Eugene C. Henning, naming his wife, Mabel Henning, as beneficiary and his father, Otto F. Henning, as contingent beneficiary.

7. That on July 27, 1944, Eugene C. Henning executed change of beneficiary form #336, naming Otto F. Henning, father, as beneficiary, but no contingent beneficiary.

8. That on October 16, 1944, the marriage of Eugene C. and Mabel H. Henning was annulled by decree of the Probate Court for Norfolk County, Massachusetts.

9. That on July 4, 1945, Eugene C. Henning died at Davisville, Rhode Island, while a member of the Armed Services.

10. That on December 8, 1945, Otto F. Henning died at Boston, Massachusetts.

11. That on February 4, 1946, the plaintiff Clara Belle Henning filed in the Veterans Administration a Veterans Administration Insurance Form 1557, alleging that she was the mother of the insured.

12. That on February 14, 1946, the interpleader defendant, Bessie M. Henning, filed in the Veterans Administration a Veterans Administration Insurance Form 1557, alleging that she was the foster-mother of the insured and that she stood in loco parentis to the insured within the meaning of that term as defined in Section 802 (f), Title 38, U. S. Code.

13. That on September 3, 1947, it was determined by the Veterans Administration that the claimant Clara B. Henning, the natural mother of the insured, be found to have last stood in loco parentis to the insured for a period of at least one year beginning during his minority prior to his entry into active service, and that the claim of Bessie M. Henning be disallowed.

14. That on August 17, 1948, the Board of Veterans Appeals decided that the veteran's step-mother, Mrs. Bessie M. Henning, stood in loco parentis to the insured and was the last person to

bear the relation of mother during his minority and prior to his entering into the military service.

15. That the decision of the Board of Veterans Appeals constituted a final administrative disallowance of the claim of Clara B. Henning for insurance benefits.

16. That a disagreement exists as to the claims arising under the National Service Life Insurance Act and that this Court has jurisdiction over this action.

Respectfully,

FREDERICK BRUEN,
Attorney for the Plaintiff;
GEORGE F. GARRITY,
United States Attorney,
By PHILIP T. JONES,
Assistant U. S. Attorney; Attorney for the Defendant.

On October 17, 1950, after oral waiver of jury trial by the parties in open court, trial began before the court, WYZANSKI, J., without jury, upon the pleadings and evidence and the foregoing stipulation of facts. After full hearing, and argument on behalf of the Administrator of Estate of Bessie Henning, the following findings of fact and conclusions were dictated in open court:

In United States District Court

Memorandum of Opinion

October 17, 1950

A jury having been waived, I shall dictate my findings and conclusions.

The question at issue in this case is who if anyone, shall receive the proceeds of a policy of national life insurance for $10,000 issued on the life of Eugene C. Henning, a service man, who died on active service on July 4, 1945.

There are three principal claimants:—first, the claim of the representative of the father of the service man; second, the claim of the mother of the service man; and third, the claim of the representative of the stepmother of the service man. In one sense this first claim just referred to has not been formally presented to the Court because there is not now living any representative or any administrator d. b. n. p. a., of the deceased father of the service man. However, I deem it appropriate, in view of the form of judgment which must be entered in this case, to take that claim into account as though it were presented and to give a reasonable period of time for application to be made to the Probate Court of

Massachusetts for the appointment of such an administrator d. b. n. p. a., and to allow such person, if appointed, to file a formal pleading in this Court prior to the entry of a judgment.

In stating the facts it will be most convenient first to point out that after Eugene died in active service on July 4, 1945, his father Otto, died on December 8, 1945, and his stepmother died on June 30, 1949. I have already pointed out that there was a problem with respect to the representative of Otto. Although after his death his widow, Bessie, was named as administratrix, she died on June 30, 1949, before she had fully administered the estate.

With regard to the claim of the stepmother, Bessie, it is important to recognize that she herself died on June 30, 1949. A Mr. Kennedy was appointed and is still serving as the administrator of her estate, but has not yet filed an amended claim, but it is understood that such a claim will be duly pleaded within the next forty-eight hours and I shall regard the pleading as though it had been filed before I dictated this memorandum.

It now is appropriate to turn to the facts with regard to the service man's relationship to the three persons, the father, the mother, and the stepmother, who either through themselves or their representatives have presented or will present claims to this Court. Eugene Charles Henning was born September 20, 1912. He was the son of Otto F. Henning and Clara Belle Henning. They seem to have separated at the time of his birth. At any rate between 1912 and about 1920 the service man and his mother lived together in the home of the maternal grandmother. During this time the support of the service man developed entirely upon the maternal side of the family.

About 1920, when the service man was about eight years of age, he went to the home of his paternal grandmother, Mrs. Henning. While he was with her she received from his mother for his account some financial assistance. I am not inclined to believe that it was quite so much as $100 a year which the mother says that she gave to her mother-in-law, but I do not regard this as a very material point.

About 1922 the service man moved to the home of a cousin on the Henning side of the family named at that time Mrs. Schacht, now known as Mrs. Schaller. The service man lived with Mrs. Schacht from the day before Thanksgiving of 1922 until about the fall of 1926.

While the service man was at his maternal grandmother's home on February 8, 1923, his father, Otto, and his mother, Clara Belle, were divorced by a decree of the Probate Court of Norfolk County in the Commonwealth of Massachusetts. It was one of the provisions of the decree that the care and custody of Eugene Henning were awarded to the father, Otto Henning. Four years later

while the service man was at the home of Mrs. Schacht, on September 3, 1927, his father Otto F. Henning, married Bessie M. Henning formerly known as Bessie M. Gass.

When Eugene was about fifteen years of age he went to live with his father and his stepmother in Dedham. While he was there his stepmother treated him with all the customary affection and attention that a mother would bestow on a natural child. She took care of his personal effects, did his laundry and furnished his meals which were no doubt paid for largely by the father. While Bessie did not call the service man a "son" or demonstrate her affection by kisses, nonetheless the relationship was reasonably close. No hostility at any time so far as the evidence indicates existed between the boy and his stepmother.

About 1930 the service man moved from the house of his father and stepmother to a boarding house run by a Mrs. Wilson. So far as appears there was no friction at home which caused him to move. He apparently chose to live in a boarding house with a friend, a Mr. James T. Shaw, who was working in the same enterprise with himself, the service man being an employee of Shaw's father and being an assistant to Shaw himself.

After about two years both the service man and Shaw went to the home of Otto and Bessie, the father and stepmother of the service man. The pleasant relationship which had characterized the service man's earlier occupancy of that home continued at the time of his second occupancy.

On January 27, 1940, the service man married Mabel Evelyn Hathaway. They lived together until November 11, 1942, when the service man entered upon active duty in the United States Navy.

After he entered the Navy the service man corresponded with his natural mother, sent her presents and sent her photographs of himself on active duty.

On December 1, 1942, the service man received a policy of national life insurance of $10,000. He originally named as beneficiaries his wife, Mabel Henning, and his father, Otto Henning, as contingent beneficiary. On July 27, 1944, Eugene C. Henning executed a change of beneficiaries, naming only his father, Otto F. Henning, as beneficiary. On October 16, 1944, the marriage of Eugene C. and Mabel H. Henning was dissolved by decree of the Probate Court for Norfolk County. On July 4, 1945, Eugene C. Henning died on active service.

I conclude as a matter of law that at the time of his death Eugene C. Henning left him surviving three persons each of whom was a "parent" within the meaning of Section 801.(f) of Title 38, United States Code. Obviously the father, Otto, at that time was a "parent". He was the natural father and he

had supported the boy, at least in part, up until his twenty-first year. The natural mother, Clara Belle Henning, was also a "parent" within the meaning of the statute. Once one is a natural parent, he or she continue to be such for statutory as well as for other purposes regardless of whether the natural parent does or does not contribute to the support of the child, does or does not discipline the child, is or is not fond of the child, does or does not desert the child. A person once tied by blood as a parent to a child always remains a parent. Such a person is a parent "first", "*last*", and all the time.

The problem with respect to the stepmother, Bessie, is somewhat more complicated. She of course is not a natural parent. She, however, stood in loco parentis during the period of time that Eugene was a minor and as long as it was possible for anybody to stand in loco parentis, that is, until Eugene reached the age of twenty-one. There is no difficulty in a person being in loco parentis, even though a natural parent or two natural parents are alive. This statute gives rights to a person "who last bore" the status of being in loco parentis. At the critical moment, when Eugene became twenty-one, three people stood in loco parentis, one on the basis of both blood and conduct, a second on the basis primarily of blood, and a third, solely on the basis of conduct. All three have the statutory standing necessary to be considered.

In the light of this determination and bearing in mind the fact that Otto F. Henning, the father, was named as beneficiary and continued to survive for some five months after the death of Eugene, I direct that a decree shall be drawn awarding sums due from July 4, 1945, to December 8, 1945, to the representative of the father, Otto F. Henning; sums due from December 9, 1945, to June 30, 1949, equally to the representative of the stepmother, Bessie, and the mother Clara, and payments due since July 1, 1949, to the mother Clara alone.

I have not overlooked in this direction Section 802 (j) of Title 38 which purports to cover the situation where a beneficiary under a policy dies after payment is due but before it is paid. Taking into account the reason of the matter and the decision in *Beaumet* v. *United States*, 2d Circuit, 177 F. 2d, 806, I conclude as a matter of law that the critical point in determining whether a beneficiary or a representative is entitled to take is whether the beneficiary was alive on the date the payment was due. It would be monstrous to give to the Veterans' Administration the power never to pay an insurance policy merely by holding up payments already due until such time as the named beneficiary or the statutory beneficiary dies. This case serves as an admirable illustration, not of any wrongdoing on the part of the Veterans' Administration, but of the injustice which would follow if the contention which

the Government makes were to prevail. Here the stepmother, Bessie, was diligent in presenting her case. Opposition to her, not without reason in view of my opinion, was made by the natural mother. The Veterans' Administration being faced with these conflicting claims refused payment and the matter came before this Court for adjudication. Efforts at a settlement were made. Such efforts failed. In the meantime Bessie died and now the Government suggests that not only Bessie cannot take because she died, but those who are her representatives cannot take and the money remains in the Treasury of the United States. A mere statement of the problem makes it plain that the Government cannot in equity or in law prevail.

A decree is to be drawn in accordance with this opinion, due provision to be made, if possible by agreement, with respect to counsel fees. In the event of failure to agree, application is to be made to the Court.

CHARLES E. WYZANSKI, J.
United States District Judge.

In United States District Court

Judgment

January 12, 1951

The court having filed a memorandum dated October 17, 1950, it is, by the court, this 12th day of January 1951.

Ordered, adjudged and decreed, as follows:

1. That Joseph S. Kennedy, as administrator of the estate of Otto F. Henning (who was the first beneficiary to whom payments should have been made and who was over 30 years of age on July 4, 1945, and who himself never exercised any option to be paid otherwise than by 120 equal monthly installments) do have and recover of and from the defendant, the United States of America $500.00, being the amount of the first six monthly installments of death benefits (calculated at the rate of $83⅓ each) under said policy, which accrued from July 4, 1945, the date of the insured's death, to and including the installment payable December 4, 1945 (the last date on which an installment was due before said Otto F. Henning died December 8, 1945).

2. That the plaintiff, Clara Belle Henning, and Joseph S. Kennedy, as administrator of the estate of Bessie M. Henning, do have and recover of and from the defendant, the United States of America, in equal shares $3,500.00, being the amount of the next forty-two monthly installments of death benefits under said policy which accrued from the installment due January 4, 1946 (the anniversary date following the date on which payments to

the legal representative of Otto F. Henning were discontinued) to and including the installment payable June 4, 1949 (the said Bessie M. Henning having died June 30, 1949).

3. That the plaintiff, Clara Belle Henning, do have and recover of and from the defendant, the United States of America, $1,583.33, being the amount of the next nineteen monthly installments of death benefits payable thereunder commencing July 4, 1949 (the anniversary date following the date on which payments of equal portions of the benefits were discontinued to her and to the administrator of Bessie M. Henning) until January 4, 1951, being the last anniversary date preceding the date this judgment is entered and also the amounts of $83.33 to be paid on the fourth day of each of the 53 months following the date of this judgment, that is the 53 months beginning February 4, 1951, provided that payment on each of those dates shall be contingent on the said Clara Belle Henning being alive that date.

4. That the defendant, the United States of America, deduct $50.00, being 10 per centum (10%) of the total sum paid to the administrator of the estate of Otto F. Henning under the said policy by virtue of and pursuant to this judgment and pay the same to Richard H. Lee, Esquire, 27 State Street, Boston, Massachusetts, for services rendered in this cause.

5. That the defendant, the United States of America, deduct $175.00, being 10 per centum (10%) of the total sum paid to the administrator of the estate of Bessie M. Henning under the said policy by virtue of and pursuant to this judgment and pay the same to Richard H. Lee, Esq., 27 State Street, Boston, Massachusetts, for services rendered in this cause.

6. That the defendant, the United States of America, deduct $175.00 plus $158.33, being 10 per centum (10%) of the total sum of the insurance benefits which have accrued to Clara Belle Henning, plaintiff, to date, and also 10 per centum (10%) of any and all future benefits which may hereafter be paid to her by virtue of and pursuant to paragraph 3 of this judgment and pay the same to Frederick Breen, Esq., 412 Barristers Hall, Boston, Massachusetts, her attorney, for services rendered in this cause.

Dated this 12 day of January 1951.

WYZANSKI,
United States District Judge.

Motion for new trial

Filed January 22, 1951

Now comes the United States of America, defendant in the above-entitled action, and moves this Honorable Court to grant

a new trial of the case on the ground that the judgment entered by the Court is erroneous in that

1. It awards benefits to the estate of a deceased beneficiary contrary to the controlling statutes and regulations of the Veterans Administration, particularly Section 602 (j) of Title 38 U. S. Code, and Section 602 (i) of Title 38 U. S. Code, and Section 602 (g) of Title 38 U. S. Code.

2. It holds that two persons, namely Bessie M. Henning, the insured's stepmother, and Clara B. Henning, the insured's natural mother, both "last bore" the relationship of a mother to the insured.

3. It holds that the insured's natural mother, Clara B. Henning, satisfies the requirements of Section 602 (h) (3) (c) of the National Service Life Insurance Act, despite the facts indicating that Mrs. Bessie M. Henning, the insured's stepmother, assumed the relationship of a mother to the insured when he was about fifteen years of age and continued to occupy such relationship until the insured married on January 27, 1940, at the age of twenty-eight, or at least until he was twenty-one years of age.

GEORGE F. GARRITY,
United States Attorney.
By PHILIP T. JONES,
Assistant U. S. Attorney.

Denied, WYZANSKI, J., Jan. 22, '51.

MEMORANDUM: The foregoing motion for new trial filed by defendant, was denied by the court, Wyzanski, J., as appears endorsed thereon.

JOHN A. CANAVAN, *Clerk.*

In United States District Court

Notice of appeal

Filed January 31, 1951.

Notice is hereby given that the defendant, United States of America, appeals to the United States Court of Appeals for the First Circuit from the judgment entered in this action on January 12, 1951.

GEORGE F. GARRITY,
United States Attorney.
By PHILIP T. JONES,
Assistant U. S. Attorney.

In United States District Court

Statement of points

Filed March 1, 1951

1. The District Court erred in entering judgment dated January 12, 1951, in this action.

2. The District Court erred in holding that once one is a natural parent he or she continues to be such for statutory as well as for other purposes regardless of whether the natural parent does or does not contribute to the support of the child, does or does not discipline the child, is or is not fond of the child, does or does not desert the child.

3. The District Court erred in holding that two persons, namely, Bessie M. Henning, the insured's stepmother, and Clara B. Henning, the insured's natural mother, both "last bore" the relationship of a mother to the insured.

4. The District Court erred in holding that the estate of a deceased beneficiary, Bessie M. Henning, is entitled to receive a part of the proceeds of a policy of National Service Life Insurance which matured prior to August 31, 1945.

5. The District Court erred in holding that the estate of a deceased beneficiary, Otto F. Henning, is entitled to receive a part of the proceeds of a policy of National Service Life Insurance which matured prior to August 31, 1945.

6. The District Court erred in awarding damages to the estate of Otto F. Henning, which estate was not a party to this proceeding.

7. The District Court erred in holding that the critical point in determining whether a beneficiary or a representative of a deceased beneficiary's estate is entitled to take proceeds of a National Service Life Insurance policy is whether the beneficiary was alive on the date the payment was due.

8. The District Court erred in denying the motion of the defendant, United States of America, for new trial.

GEORGE F. GARRITY,
United States Attorney.
By PHILIP T. JONES,
Assistant U. S. Attorney.

Designation of contents of record on appeal [omitted in printing]

MEMORANDUM: Order for enlargement of time in the District Court for filing record and docketing case to and including April 11, 1951, is here omitted.

JOHN A. CANAVAN, *Clerk.*

Clerk's certificate to foregoing transcript omitted in printing.

United States Court of Appeals for the First Circuit.

OCTOBER TERM, 1950

No. 4571

UNITED STATES OF AMERICA, DEFENDANT, APPELLANT

v.

CLARA BELLE HENNING ET AL., APPELLEES

Order re statement of points

April 13, 1951

Upon motion, assented to, Leave is hereby granted appellant to amend its statement of points by adding thereto the following:

9. The District Court erred in awarding benefits "in 120 equal monthly installments" contrary to statute.

By the Court:

(S) ROGER A. STINCHFIELD,

Clerk.

PROCEEDINGS IN COURT OF APPEALS

On April 16, 1951, the following "Suggestion of Death" was filed:

Suggestion of Death

Now comes Joseph S. Kennedy of Dedham, Massachusetts, and states that Bessie M. Henning, who was the Administratrix of the estate of Otto F. Henning, late of Dedham, and who filed an original answer in the District Court of the United States, No. 7917, in which she alleged her representative capacity as Administratrix, died on the 30th day of June, 1949, prior to the entry of judgment in the said case, without having completed her administration of the estate of Otto F. Henning, and that on the 3rd day of January, 1951, Joseph S. Kennedy was duly appointed the Administrator of the estate not already administered of said Otto F. Henning, and succeeded to the powers and duties previously exercised by Bessie M. Henning, as legal representative of the estate of said Otto F. Henning, and that the said appointment of Joseph S. Kennedy was made known to counsel in the above case and to the Court, and that the parties believed that substitution of the successor in trust had been properly effected, and that judgment was rendered on the basis of said substitution without claim of error by any parties.

Wherefore the said Joseph S. Kennedy moves that he as Administrator of the estate not already administered of Otto F. Henning be substituted for Bessie M. Henning as Administratrix, and that the pleadings filed by the said Bessie M. Henning as such Administratrix be adopted as pleadings of the defendant Joseph S. Kennedy, the Administrator of the estate not already administered of Otto F. Henning.

By his Attorney:

(S.) Richard H. Lee,
10 State St., Boston.

Assented To:

(S.) Frederick Breen, *Attorney.*
for Clara Belle Henning.

(S.) Philip T. Jones, *Assistant U. S. Attorney.*

On the same day, April 16, 1951, the following order of Court was entered:

Order of Court—April 16, 1951

Upon suggestion of death of Bessie M. Henning, Administratrix of the estate of Otto F. Henning, and upon motion, assented to, Joseph S. Kennedy, as Administrator of the estate not already administered of said Otto F. Henning, is hereby substituted for said

Bessie M. Henning, Administratrix, and is admitted as party defendant-appellee herein.

By the Court;

(S.) ROGER A. STINCHFIELD,
Clerk.

PROCEEDINGS IN COURT OF APPEALS

Thereafter, to wit, on June 5, 1951, this cause came on to be heard and was fully heard by the Court, Honorable Calvert Magruder, Chief Judge, and Honorable Peter Woodbury and Honorable John P. Hartigan, Circuit Judges, sitting.

Thereafter on September 4, 1951, the following opinion of the Court was filed:

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT—OCTOBER TERM, 1950

No. 4571

UNITED STATES OF AMERICA, DEFENDANT, APPELLANT

v.

CLARA BELLE HENNING ET AL., APPELLEES

Appeal from the United States District Court for the District of Massachusetts

[93 F. Supp. 380]

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

Russell Chapin, Attorney, Department of Justice, with whom *George F. Garrity*, United States Attorney, *Philip T. Jones*, Assistant U. S. Attorney, *Holmes Baldridge*, Assistant Attorney General, and *D. Vance Swann*, Attorney, Department of Justice, were on brief for United States of America.

Frederick Breen for Clara Belle Henning.

Richard H. Lee, with whom *Lloyd, Lee & Sherman* were on brief for Joseph S. Kennedy as Administrator of the Estate of Bessie M. Henning and also as Administrator of the estate not already administered of Otto F. Henning.

OPINION OF THE COURT—September 4, 1951

WOODBURY, *Circuit Judge:*

This appeal presents questions with respect to the disposition of the proceeds of a policy of National Service Life Insurance. There is no dispute as to the facts.

The insured serviceman, Eugene C. Henning, was born to Otto F. and Clara Belle Henning on September 20, 1912, in Boston, Massachusetts. Otto and Clara separated almost immediately after Eugene's birth, and Eugene went with his mother to live in his maternal grandmother's home where he was supported entirely by the maternal side of his family. This arrangement continued until about 1920 when the insured went to live in the home of his paternal grandmother. While there the mother made some, but not great, financial contribution toward his support. Then about 1922 the insured moved to the home of a cousin on his father's side of the family. In 1923, Otto and Clara were divorced on Otto's petition, custody of Eugene being awarded to Otto, and in September 1927 Otto married one Bessie M. Gass. Thereupon the insured, who was then about fifteen years of age, went to live with his father and stepmother.

While he was living in his father's newly established home his stepmother treated him with all the affection, and gave him all the attention, that a natural mother would ordinarly bestow upon a son. She cared for his personal effects, did his laundry, and furnished him meals which the court below found "were no doubt paid for largely by the father." While Bessie did not call the insured her "son", or demonstrate her affection for him effusively, their relationship was reasonably close and no hostility ever existed between them.

About 1930 the insured moved to a boarding house, not because of any family friction, but because he wished to live with the son of his employer, who was a close friend and fellow worker. After about two years in the boarding house, however, both he and his friend went to live with Otto and Bessie. The pleasant relationship which had characterized the insured's earlier occupancy of his father's new home continued throughout this second occupancy.

In January 1940 the insured married, and thereafter he lived with his wife until November 11, 1942, when he entered upon active duty in the United States Navy. After he entered the navy he corresponded with his natural mother and sent her presents and photographs of himself.

On December 1, 1942, the $10,000 policy of National Service Life Insurance involved herein issued on the life of the insured. In this policy the insured's wife was named as the beneficiary and his father as the contingent beneficiary. In July, 1944, however, the insured, by executing the appropriate form, named his father

as sole beneficiary of the full amount of insurance, and in October of that year his marriage was annulled. The insured's former wife makes no claim to the proceeds of this insurance policy and is not a party to this action.

The insured died on active service on July 4, 1945, and his father, apparently without filing any claim to the proceeds of the policy, died on December 8 of the same year. Clara Belle filed her claim with the Veterans' Administration February 4, 1946, alleging that she was the mother of the insured, and ten days later, Bessie, the stepmother, also filed a claim based on the contention that she had last stood in loco parentis to the insured. The Veterans' Administration determined that Clara Belle, as the natural mother, had last stood in loco parentis to the insured and allowed her claim, disallowing that of Bessie. The Board of Veterans' Appeals, however, reversed. It found that the stepmother, Bessie, had last stood in loco parentis to the insured and allowed her claim, and this, it is agreed, constituted a final administrative disallowance of Clara Belle's claim.

Clara Belle thereupon brought the instant action wherein Bessie was impleaded as a defendant. Bessie, however, died on June 30, 1949, before the case came on for trial in the court below, thus leaving the natural mother the sole survivor of those who had ever stood in any parental relationship to the insured.

On these facts the court below, dividing the face amount of the policy into one hundred twenty equal installments of $83.33\frac{1}{3}$ each, determined that the installments which fell due from the time the policy matured to the date the named beneficiary, the father, died, were payable to his estate; that the installments which fell due from the date of the father's death to the date the stepmother died were payable one half to the natural mother and one half to the stepmother's estate, since during that time both women bore the parental relationship requisite under the statute to qualify as beneficiaries, and that subsequent installments were payable to Clara Belle, the natural mother, should she survive to receive them. The present appeal by the United States is from the judgment entered in conformity with these conclusions.

The Government makes three principal contentions. It says that the statute applicable on the date the insurance matured clearly forbad the payment of any installment of National Service Life Insurance to the legal representative of a deceased beneficiary; that two women, one the natural mother and the other the stepmother, cannot, under the applicable statutory provisions, both simultaneously bear the parental relationship in the insured requisite for qualification as a beneficiary; and that the court below erred, first in directing payment in one hundred twenty equal installments without regard to the attained age of the beneficiary and without election by the beneficiary as to the method of pay-

ment, and second in directing the payment of monthly benefits in the amount of $83.33⅓ each.

The major issue in this case is whether the District Court erred in ordering that, under the National Service Life Insurance Act of 1940 (54 Stat. 1008) as amended in 1942 (56 Stat. 657), payments be made to the administrators of the estates of deceased beneficiaries. The Government argues that it did, and in support of its position points to § 602 (i) and (j) of the 1940 Act (which were not amended in 1942) wherein it is provided in material part as follows:

> "(i) . . . The right of any beneficiary to payment of any installment shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority . . .
>
> "(j) No installments of such insurance shall be paid to the heirs or legal representatives as such of . . . any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made."

The Government's position is that the above language clearly and unequivocally provides that a beneficiary must be alive to receive the payment of any installment, and that if he or she should die before receiving any installment, even though it was due and owing but for any reason, even the Government's neglect, not paid, then payment must be made to the beneficiary or beneficiaries in the class next entitled, or, in default of such, no payment at all may be made. The District Court characterized the result of this construction of the Act as "monstrous", and, relying upon *Baumet* v. *United States*, 177 F. 2d 806 (2nd Cir. 1949), *cert. den.* 339 U.S. 923, *motion for leave to file petition for rehearing denied*, 339 U.S. 973, held that installments which fell due but were not paid during a beneficiary's lifetime were payable to the legal representative of the beneficiary, and that the statutory language only required that installments which accrued after a beneficiary's death were payable to the next entitled beneficiary. Although there are several District Court cases wherein the opposite view prevailed,[1] we agree with the court below.

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[1] *Baumet* v. *United States*, 81 F. Supp. 1012 (S.D.N.Y. 1948); *Carpenter* v. *United States*, 72 F. Supp. 510 (W.D.Pa. 1947); *rev'd on other grounds*, 168 F.2d 369 (3rd Cir. 1948); *Washburn* v. *United States*, 63 F. Supp. 244, 228 (W.D.Mo. 1945).

It is certainly true that the literal wording of the statute goes a long way toward sustaining the Government's contention. On the other hand, it requires little imagination to visualize some rather amazing consequences of the interpretation of the statute urged by the Government. For example, should the officer of the Veterans' Administration charged with the payment of benefits on some pretext or other withhold payments until a beneficiary died, he could then pay the full proceeds of the insurance to the beneficiary next in priority and thus give the latter benefits to which the deceased beneficiary was justly entitled. Or the paying officer could defeat the payment of any benefits whatever simply by withholding payment of any installment until all beneficiaries died. Moreover, as a further and more probable example, as the Court of Appeals pointed out in the *Baumet* case, a second priority beneficiary, however specious his claim, could sue upon it, and, if fortunate enough to be able to make his suit outlive the first priority beneficiary, who might be aged or ill, take all to the exclusion of the person or persons in the class for whom Congress had expressed the greater concern. To say the least it seems unlikely that Congress intended to pass legislation, particularly remedial legislation such as the Act under consideration, capable of producing such unjust, startling and capricious results.

Nevertheless it is true, as the Government suggests, that in the War Risk Insurance Act of 1924 (43 Stat. 614) Congress specifically provided for the payment of accrued installments to the estates of deceased beneficiaries, and that by amendment of the 1940 Act in 1946 (60 Stat. 786) it made a like specific provision with respect to National Service Life Insurance maturing on or after August 1, 1946, over a year after the insured's death. From this it can be argued that by the omission of a similar specific provision of the Act of 1940 as it stood amended in 1942, Congress must have intended to deny any payment of installments, even those which had accrued during a beneficiary's lifetime, to the estate of a beneficiary who had died.

However, in view of the hasty consideration given by Congress to the 1940 Act and its 1942 amendment (see *Carpenter* v. *United States*, 168 F. 2d 369 (3rd Cir. 1948)), the unfortunate consequences resulting from the literal interpretation of the statutory language, and the lack of any legislative history to indicate the contrary, we think the deviation in 1940 act from the text of the earlier Act of 1924 was not purposeful and therefore is not significant. Like considerations also lead us to the conclusion that the 1946 amendment referred to above was intended only to clarify, not to alter, the original Act. And we do not think too much significance should be attached to the fact that Congress made its 1946 amendment applicable only to insurance maturing on or after August 1, 1946, for Congress at that time was not merely amending the Act in the particular respect under consideration but

was providing a wholly new system for the payment of benefits, and hence it can hardly be assumed that its attention was focused on the precise narrow question of relatively minor importance with which we are here concerned.

The foregoing considerations, plus consideration of the remedial nature of the statute, lead us to construe the Act liberally in the direction of the payment of benefits rather than the making of profits for the Government by escheat, and hence we agree with the interpretation of the statute by the court below and by the Court of Appeals for the Second Circuit in the *Baumet* case, *supra*.

This brings us to the question whether the natural mother and the stepmother qualify under the statute as simultaneous beneficiaries with the result that the installments which accrued while both lived are payable to the natural mother and the stepmother's estate, share and share alike.

Section 601 of the 1940 Act as it stood after amendment in 1942 (56 Stat. 659) defined the terms "parent", "father", and "mother" to "include a father, mother, father through adoption, mother through adoption, and persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year." Moreover, at the same time § 602 (g) of the original Act was amended by deletion of the specific provision that for the purpose of designation of beneficiaries the term parent included those persons who had stood in loco parentis to the insured, and the same amendment also altered § 602 (h) (3) (C) to read:

> "(h) Such insurance shall be payable in the following manner:
>
> * * *
>
> (3) Any installments certain of insurance remaining at the death of any beneficiary shall be paid in equal monthly installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes hereinafter specified and in the order named, unless designated by the insured in a different order—
>
> * * *
>
> (C) if no widow, widower, or child, to the parent or parents of the insured who last bore that relationship, if living, in equal shares;"
>
> * * *

The question is purely one of statutory interpretation. And the statutory language quoted above which we are called upon to interpret is not by any means as clear as it might be.

The District Court took the view that Clara Belle Henning as the natural mother was the insured's mother "'first', *'last'* and all the time" for statutory as well as for other purposes. But it found that the stepmother, Bessie, had stood in loco parentis to Eugene for the period of time required by the statute to qualify as a beneficiary. Thus it concluded that three persons had borne a parental relationship to Eugene; the father, Otto, on the basis of both blood and conduct, the natural mother, Clara, on the basis primarily of blood but to some extent on conduct, and the stepmother, Bessie, solely on the basis of conduct. Then, finding no difficulty in the concept of "a person being in loco parentis, even though a natural parent or two natural parents were alive", it concluded that after the death of Otto, the named beneficiary and father, both Clara and Bessie bore the parental status required to qualify as beneficiaries under the statute. Hence it ruled that both were entitled to share equally in the installments which fell due from the time Otto died to the time of Bessie's death.

The Court of Appeals for the Second Circuit, however, in a second appeal in the *Baumet* case, (*Baumet* v. *United States*, decided July 23, 1951) explicitly disagreed with the court below. It said that an insured could have "but one maternal parent and one paternal parent", and since the statute recognized persons in loco parentis as parents, and the insured's foster parents last bore that relationship to the insured, the foster father was the paternal parent for the purpose of the statute and the appellant as the natural father "cannot satisfy the statutory requirement."

The facts in the *Baumet* case, however, differ from those in ours in that in *Baumet* the insured and his natural father were estranged, and perhaps the latter had wholly abandoned all parental responsibility and control; whereas in ours there is no finding or evidence of any estrangement, to say nothing of abandonment, or even any lack of parental feeling, between Eugene and his mother, Clara Belle. Furthermore the holding of the *Baumet* case leaves unanswered, and it would seem unanswerable, cases in which a maternal parent and another person of the same sex had combined resources to establish, maintain and support a home for a child who later became an insured. For example, suppose the widowed mother of an infant and the mother's sister, (the child's aunt,) live together, each contributing substantially equally to the support of the home and the feeding and clothing of the child and each sharing in the child's upbringing. Both would then be in loco parentis to the child and it would seem hardly within the contemplation of Congress that one should take all the insurance proceeds to the exclusion of the other.

Certainly Congress intended by the statutory language to include in the class of parents those who, regardless of blood, had last stood in loco parentis to an insured for at least a year. But

we do not think that Congress intended by so doing completely to exclude a natural parent from the class of beneficiaries in every case wherein some other person of the same sex had stood in loco parentis to an insured for the requisite period. For instance, it seems to us hardly likely that Congress would wish to eliminate as a beneficiary a natural parent, who, perhaps with all parental good will, happened for ill health, financial disaster, or some other comparable reason to be incapable of caring for his or her child, and instead to favor some stranger to the blood who might by force of temporary circumstances have last stood for a year in loco parentis to an insured.

On the whole, therefore, and with all deference to the Court of Appeals for the Second Circuit, we incline to the view of the District Court. In doing so, however, we are not to be understood as holding that a natural parent by that fact alone necessarily remains for life a statutory beneficiary under all circumstances. It may be that a natural parent who has voluntarily for some selfish reason abandoned all parental responsibility cannot be heard to assert his or her parenthood only for the purpose of collecting insurance benefits. See *United States* v. *Kwasniewski*, 91 F. Supp. 847, 853 (E.D. Mich. 1950). This question, however, is not now before us and we therefore pass it until it is presented.

We come now to the question whether the court below fell into error in ordering payments in one hundred twenty equal installments in the absence of an election by the first beneficiary, Otto, to be paid in that manner.

The statute as it stood on the date of the insured's death did not give the first beneficiary any election as to mode of payment. It provided in (1) and (2) of § 602 (h) of the 1940 Act, which were not amended in 1942, that if the first beneficiary were under thirty years of age on the date of maturity the insurance was payable in two hundred and forty equal monthly installments, and that if the beneficiary were thirty or more years of age on the pivotal date, the payment was to be made "in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary." It being clear from the available data that the first beneficiary, the father Otto, was over thirty when his son died, it is evident that under the foregoing statutory provision the policy was payable without any election on Otto's part in equal monthly installments for as long as he lived with payment of one hundred and twenty such installments certain whether he died in the meantime or not.

But the above statutory provisions were amended in 1946 (60 Stat. 783) by providing for the permissive inclusion by the administrator in policies maturing prior to the effective date of the amendment of provisions giving the first beneficiary the power to elect

between installment payments as above and a refund life income, also payable in monthly installments.

Whether or not the Administrator ever did include an election provision in Eugene's policy does not appear from the record. But however this may be, the election, if it was given, was given to the first beneficiary, who we have held to have been Otto, and it is clear that he could not have exercised it for he died without making any claim under the policy. Therefore as we see it, the policy in suit was payable in equal monthly installments during Otto's life-time with one hundred and twenty such installments certain.

The question of the amount of monthly installments remains.

The court below arrived at their amount simply by dividing the face amount of the policy into one hundred and twenty equal parts. This was error. The amount of the monthly installments must be arrived at as a result of actuarial computations based on the life expectancy of the first beneficiary, as fully explained in *United States* v. *Zazove*, 334 U.S. 602 (1948). The case must, therefore, be remanded for the purpose of making this computation.

The judgment of the District Court is reversed and the case is remanded to that Court for further proceedings consistent with this opinion.

On the same day, September 4, 1951, the following judgment was entered:

JUDGMENT—September 4, 1951

This cause came on to be heard on the record on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is reversed and the case is remanded to that Court for further proceedings consistent with the opinion passed down this day.

By the Court:

(S:) ROGER A. STINCHFIELD,
Clerk.

Thereafter, to wit, on September 20, 1951 mandate issued.

CLERK'S CERTIFICATE

I, Roger A. Stinchfield, Clerk of the United States Court of Appeals for the First Circuit, certify that the foregoing pages, numbered 1 to 55 inclusive, contain and are a true copy of the record on appeal and all proceedings to and including October 19, 1951, in the cause in said Court numbered and entitled, No. 4571, United

States of America, defendant, appellant, versus Clara Belle Henning et al., appellees.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Court of Appeals for the First Circuit, at Boston, Massachusetts, in said First Circuit, this nineteenth day of October, A. D. 1951.

(S.) ROGER A. STINCHFIELD,
Clerk.

[SEAL.]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 972697 934

Supreme Court of the United States

No. 456, October Term, 1951

Title omitted.

Order allowing certiorari. Filed January 28, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

And it is further ordered, that the duly certified copy of the transcript of the proceeding below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1952